IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 189 of 2004

AMBALAL & ORS
V/S
KESURAM

Mr. ARUN BHANSALI, for the appellant / petitioner

Mr. AK JAIN, for the respondent

Date of Order : 18.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The stand of the defendant was that the land belongs to him under Patta and the learned courts below have found that the Patta does not relate to this land. This is finding of fact and is not shown to have been vitiated on any of the ground available under Sec. 100 CPC.

It was also contended that the plaintiff filed a simple suit for injunction while the defendant admittedly was in possession of the land and therefore, without filing suit for possession a decree for injunction could not be granted as granted by both the learned courts below.

I have considered the submission. In my view from the averments of the plaint itself, it is clear that the

appellant had started to disturb and interfere in the plaintiff's possession by effecting certain excavation and collecting building material and immediately the suit had been filed. Such act of the defendant could not be said to be completed act of being in possession of the property and did amount only to intended tresspass. As such, the argument cannot be accepted.

Having examined the impugned judgments thereafter, I do not find any substantial question of law to be involving in the present appeal and do not find any error requiring any interference in my second appellate jurisdiction. The appeal is, therefore, dismissed summarily.

(N P GUPTA),J.

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